IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**WRIT PETITION NO : 226 of 2004**

Between:

Toddy Tappers Cooperative Society, Komatikunta Group,
rep by its President Komatikunta, Hyderabad.

**..... PETITIONER**

AND

1 The Govt. of A.P. Rep by the Principal Secretary to Government,
Revenue (Excise-II) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Hyderabad.
3 The Prohibition and Excise Superintendent, Hyderabad District, Naraynaguda, Hyderabad.
4 The Sub Division Prohibition & Excise Officer, SHO, Dhoolpet, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, in the nature of Writ of Mandamus or any other appropriate Writ, direction or order, declaring paragraph 3 of the Memo.No. 64018/Ex.II(1)/03-8, Revenue (Ex.II) Department, dated 18/11/2003 of the Government of Andhra Pradesh the 1st respondent herein, in so far as it relates to the petitioner society, and the consequential notice bearing Cr. No. Spl/03, dated 26-12-2003 of the Sub Divisional Prohibition and Excise Officer, SHO, Dhoolpet, Hyderabad, the 4th respondent herein, as illegal and void.

**Counsel for the Petitioner:MR.P.KAMLAKAR**

**Counsel for the Respondents: GP FOR PROHIBITION & EXCISE**

The Court made the following :

**THE HON'BLE SRI JUSTICE B.PRAKASH RAO**

**W.P.No.226 OF 2004**

**ORDER:**

The petitioner society filed this Writ Petition, inter alia, seeking for a Writ of Mandamus challenging the correctness of the proceedings vide Memo, dated 18-11-2003, of the respondent No.1 herein in regard to the petitioner society and also notice dated 26-12-2003 issued by the 4th respondent herein, as illegal and bad.

Heard the learned Counsel appearing for the petitioner and the Government Pleader for Excise.

The short question, which falls for consideration in this Writ Petition, is as to whether arrears of a society whose licence had suspended and ultimately cancelled can be recovered from the Society, which has been formed afresh, though by few members of the earlier society.

The facts in brief are that in respect of a society called as T.C.S., Komatikunta, the licence was granted by the 3rd respondent herein on 02-04-2002 for establishing the shops for the period from 01-04-2002 to 31-03-2007. However, the said licence was suspended as per the proceedings of the 3rd respondent dated 17-09-2002, pending enquiry into the alleged adulteration of toddy. The said orders of suspension was challenged in W.P.No.18878 of 2002, which was dismissed by this Court on 28-10-2003. The 3rd respondent had issued proceedings on 22-01-2003 canceling the licences of the said society for non-payment of Rs.21,39,982/- towards the rentals for the period from September to November 2002, which covers the period of suspension. However, no recovery steps were taken by the 3rd respondent immediately. As per the amendment introduced in G.O.Ms.No.785 Revenue (Excise II) Department dated 24-10-2002 replacing the guidelines and providing for the creation of a new society by the members, who are not involved in the adulteration, or any criminal case earlier. Accordingly the case of the petitioner is that 136

persons, who have been the members of the said society, filed an application on 24-03-2003 to the 3rd respondent to form a new T.C.S. and for grant of licences. In respond to the letter dated 10-04-2003 of the 3rd respondent seeking compliance of certain requirements and also another letter dated 21-04-2003 the petitioner has complied the same, apart from making the deposit of the amounts as called upon. Ultimately, on 25-04-2003 the 3rd respondent issued the certificate of registration under Section 8 of the A.P. Cooperative Societies Act, 1964. Under the letter dated 25-04-2003 said required aspects also been complied with. It was submitted that on the insistence and force, the petitioner society had to deposit Rs.6,40,325/-, alleged to be the first instalment, towards the existing arrears of rentals of the erstwhile T.C.S, Komatikunta, on 07-05-2003. There is no dispute in regard to the compliance of the formalities required as per the law or the deposit to be made by the petitioner, which is a new society formed with the few members of the existing erstwhile TCS, Komatikunta. The licences have also been granted and accordingly the petitioner is carrying on the business. However, now the respondents herein made a demand for clearing of the arrears of the erstwhile TCS, Komatikunta, and accordingly the matter had went to the Government at the instance of the petitioner and also at that of the erstwhile society. It is submitted that since the petitioner is a new entity under law, cannot be mulcted with any liabilities of any other similar such entity in spite of the fact that the members are from the erstwhile society. It is their case that there is no provision also under the said act or the rules for mulcting the liabilities of any other similar such entity to the newly formed society, though formed with the old members, for the purpose of recovering the arrears of the erstwhile society. Therefore, the case of the petitioner is that respondents have no power, authority or jurisdiction to recover the arrears of the erstwhile society from the petitioner and any payment made by the petitioner is only under some force or threat and therefore that itself would not also come against the petitioner in protecting its rights. Hence, the Writ Petition.

In the counter-affidavit filed on behalf of the respondents herein, there is no dispute with regard to the checkered events leading to the suspension and cancellation of the erstwhile society and also the approach of the erstwhile society and the petitioner in regard to the demands made by the respondents towards the arrears of the erstwhile society and also in regard to the disposal of one revision by the Government. It was further pointed out that at the time of granting of the fresh licence

to the petitioner, it was made a condition that the petitioner should clear all arrears and further even the President of the petitioner society had also given an undertaking in writing on 29-03-2003 stating that they will pay the balance rental of T.C.S., Komatikunta in installments. Further, first instalment also has not been paid, so it is not open for the petitioner herein to seek any exemption. Further reliance was also placed by the respondents herein under Rule 28 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, which states that notwithstanding the suspension of licences, the licensee is liable to pay the rental along with the interest till the finalisation of the action initiated against the licensees or restoration of the licence, whichever is earlier. Therefore, it was stated that the petitioner cannot escape the liability. On a conspectus of the fact involved, there is no dispute to the aspect that admittedly the petitioner is a new entity having been formed with few members of the erstwhile society. There cannot be any dispute in regard to the fact that the erstwhile T.C.S., Komatikunta and the petitioner society are totally two different legal entities and the petitioner society is not outcome of any proceedings at the instance of the erstwhile T.C.S., Komatikunta. There is no allegation at any point of time that the petitioner society has passed any resolution or taken a decision as such. On a given set of circumstances, it is amply clear that the petitioner was in fact seeking formation of new society and for grant of fresh licences at this juncture. The president appears to have given a statement, but on itself does not show any authority conferred by him in respect of mulcting the liabilities on the petitioner society. There is no other provision placed by the Government Pleader to show that such liability can continue to exist, especially where members are one and the same. The only rule, which has been cited across the bar is Rule 28 as aforesaid, which in no way contemplates that any such liabilities can be passed on to the subsequently formed society, though by the same members.

In the circumstances, it is to be held that petitioner society being a new and fresh one having its own independent identity in law and otherwise, cannot be mulcted with any liability of any erstwhile society, in spite of the fact few members in the petitioner society are from the erstwhile society.

The Writ Petition is accordingly, allowed. The impugned proceedings are set aside. No costs.

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B.PRAKASH RAO, J.

Dated 07-09-2004.

Skmr

To

1 The Principal Secretary to Government, Govt. of A.P.,
Revenue (Excise-II) Department, Secretariat, Hyderabad.
2 The Commissioner of Prohibition and Excise, Hyderabad.
3 The Prohibition and Excise Superintendent, Hyderabad District, Naraynaguda, Hyderabad.
4 The Sub Division Prohibition & Excise Officer, SHO, Dhoolpet, Hyderabad.

5. 2CCs to G.P. for Prohibition and Excise, High Court of A.P.,

Hyderabad(OUT).

6. 2CD copies